IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5263 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVA WAGHANIA SEVA SAHAKARI MANDALI LTD. & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BM MANGUKIYA for Petitioner(s) : 1 - 2.
MS ML SHAH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/11/2006

ORAL JUDGMENT

1. In this petition, the petitioner society has challenged an order dated 24-6-1998 passed by

the District Registrar Amreli taking action of interim liquidation in exercise of powers under Section 107 of the Gujarat Cooperative Societies Act (here-in-after referred to as “the said Act”). Impugned order also provides for interim liquidation by way of interim measure. This Court while issuing notice by an order dated 7-7-1998 by way of interim protection provided that “The part of the order taking petitioner no.1 society in interim liquidation will remain stayed until the notice is heard.”

1.1 The above interim protection continued in favour of the petitioners during the pendency of this petition.

2. Apparently, intention of the Court was to stay the order of interim liquidation however, this Court had not stayed further proceedings for passing final order of liquidation if the respondents found it necessary after following due process of law.

3. Learned advocate Shri Mangukiya however stated that whatever be the reason, the respondents have thereafter not passed any further order and no final order of liquidation has been passed against the petitioner no.1-society.

3.1 Learned advocate Shri Mangukiya submitted that the impugned action of District Registrar is without authority inasmuch as District Registrar himself was a member of the District Union of which the petitioner no.1 society is also a member. He further submitted that the condition of petitioner no.1 society was sound all through out and that therefore, there was no need to resort interim liquidation. He further submitted that thereafter, also the performance of the petitioner no.1 society has been more than satisfactory and currently also petitioner no.1 society is making profit.

4. Learned AGP Ms. M.L. Shah on the other hand supported the impugned action and submitted that in any case the petitioners would have an

opportunity to represent the full facts before the authorities before final order of liquidation could be passed.

5. In facts of this Case, however, I do not find it necessary to examine the rival contentions on merits. Fact of the matter is that this Court while issuing notice in the petition stayed the order of interim liquidation. Whatever be the reason, respondents thereafter did not pass any final order of liquidation of the petitioner no.1 society. More than eight years have passed since this Court granted protection in favour of the petitioners and stayed the interim liquidation. Presently therefore, if the respondents wish to pass any order of liquidation of petitioner no.1 society, current position of the petitioner no.1 society shall have to be taken into account. Full detail of current financial position of petitioner no.1 society is not on record nor would it be possible to examine such material. Suffice it to say, it would not be appropriate to permit the

respondents to rely on the impugned order passed way back in the year 1998 to take further action of liquidation of the society. If the respondents find it necessary to take any further steps in terms of provisions contained in Section 107 of the said Act, or other relevant provisions, on the basis of currently prevailing situation, it would always be open for the respondents to proceed in accordance with law in this regard. However, for the limited purpose of this petition, impugned interim liquidation cannot be permitted to be operated in view of the peculiar fact situation of the case.

6. In the result, impugned order dated 24-6-1998 is quashed.

7. Subject to above observation, the petition is allowed. Rule made absolute with no order as to costs.

(Akil Kureshi, J.)

(raghu)